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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,100 .	09/26/2003	Erwin R. John	50124/01101	7113
<div>7590 05/03/2007 FAY KAPLUN &amp; MARCIN, LLP Suite 702 150 Broadway New York, NY 10038</div>			<div>EXAMINER BOUCHELLE, LAURA A</div>	
			<div>ART UNIT 3763</div>	<div>PAPER NUMBER</div>
			<div>MAIL DATE 05/03/2007</div>	<div>DELIVERY MODE PAPER</div>

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

ED

<b>Office Action Summary</b>	<b>Application No.</b> 10/672,100	<b>Applicant(s)</b> JOHN, ERWIN R.	
	<b>Examiner</b> Laura A. Bouchelle	<b>Art Unit</b> 3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-35 and 47-55 is/are pending in the application.
- 4a) Of the above claim(s) 53-55 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-35 and 47-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Response to Amendment***

***Election/Restrictions***

1. Newly submitted claims 53-55 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 53-55 are drawn to a computer-readable medium that requires a distinct field of search from the original claims.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 53-55 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Claim Rejections - 35 USC § 103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-4, 6, 9, 10, 12-18, 20, 21, 23, 24, 27, 28, 30, 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gijsbers et al (US 6551301) in view of Cancro et al (US 20040116789) in further view of Saul et al (US 6575928). Gijsbers discloses a brain fluid ion concentration modification for treating neurological disorders comprising inserting a first and second conduit into contact with a patient's CSF, determining a chemical imbalance in the CSF, and treating the patient by supplying to the CSF with one conduit and withdrawing from the CSF

Art Unit: 3763

(Col. 2, lines 20-60-68). The device comprises a first pump 14 between the first reservoir and the distal end of the first conduit (Col. 2, lines 20-35).

4. Claims 1, 20 differ from Gijsbers in calling for the step of detecting and analyzing brain activity. Claim 2, 24 differ in calling for the brain activity to be detected using QEEG. Claim 49 calls for the brain activity to be compared to normal brain activity. Cancro teaches a method for investigating central nervous system drugs comprising the steps of analyzing brain activity to determine the effectiveness of a drug using QEEG to determine normal from abnormal brain activity (Page 3, paragraph 0029, Page 4). Determining abnormal brain activity inherently includes the step of comparing the brain activity to normal brain activity. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the method of Gijsbers to include the steps of monitoring brain activity using QEEG as taught by Cancro to determine normal from abnormal brain activity.

5. Claims 1, 20 further differ from Gijsbers in view of Cancro in calling for the CSF to be withdrawn from the CNS and prevented from reentering the CNS. Saul teaches a device for removing CSF from the CNS and draining the fluid into either a site within the patient's body, or outside the patient's body to prevent absorption or recirculation of toxic material (Col. 6, lines 48-63). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Gijsbers in view of Cancro so that the fluid is prevented from reentering the CNS as taught by Saul to prevent the recirculation of toxic materials.

Art Unit: 3763

6. Claims 5, 11, 22, 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gijsbers in view of Cancro in view of Saul as applied to claims 1, 20 above, and further in view of Harper et al (US 6436091). Claims 5, 11, 22, 29 differ from the teachings above in calling for the pump to be an osmotic pump. Harper teaches a method for delivering a pharmaceutical agent comprising an osmotic pump that allows the infusion rate to be adjusted (Col. 2, lines 50-55). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the pump of Gijsbers in view of Cancro in view of Saul to be an osmotic pump as taught by Harper so that the infusion rate of the device can be adjusted.

7. Claims 7, 8, 25, 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gijsbers in view of Cancro in view of Saul as applied to claims 1, 20 above, and further in view of Brengle et al (US 20030130645). Claims 7, 8, 25, 26 differ from the teachings above in calling for the device to include a plurality of chambers and a plurality of pumps. Brengle teaches a device of delivering medical fluid comprising a plurality of chambers controlled by a plurality of pumps so that the treatment can be tailored to fit the patient's needs (Page 1, paragraph 0010). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the device above to include a plurality of chambers and a plurality of pumps as taught by Brengle so that the treatment can be tailored to fit the patient's needs.

8. Claims 19, 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gijsbers in view of Cancro in view of Saul as applied to claims 1, 20 above, and further in view of Saul et al (US 6575928). Claims 19, 35 differ from the teachings above in calling for the imbalance to be

Art Unit: 3763

an intracranial pressure imbalance. Saul teaches a method for removing CSF from a patients CSF space wherein the imbalance that is corrected is an imbalance of intracranial pressure because an imbalance in intracranial pressure can cause diseases. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the method above to include the treatment of intracranial pressure as taught by Saul because an imbalance in intracranial pressure can cause diseases.

9. Claims 47, 48, 50, 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gijsbers in view of Cancro in view of Saul as applied to claim 1 above, and further in view of Yost et al (US 5617873). Claims 47, 48, 50, 51 differ from the teachings above in calling for the step of determining the intracranial pressure. Yost teaches a method of monitoring the intracranial pressure because intracranial pressure is an important indicator of certain pathologies. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method taught above to include measuring the intracranial pressure as taught by Yost because the intracranial pressure can indicate certain pathologies.

10. Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gijsbers in view of Cancro in view of Saul as applied to claim 20 above, and further in view of Rohr et al (US 2003/0171711). Claim 52 differs from the teachings above in calling for the device to include a memory. Rohr teaches a system for delivering a drug to the CNS including the step of including a memory for storing a database of sensed data and response data for modeling treatment (page 7; line7-10). Therefore, it would have been obvious to one of ordinary skill in the art at the time

of invention to modify the method taught above to include a memory for storing a database of sensed data and response data for modeling treatment as taught by Rohr.

### ***Response to Arguments***

11. Applicant's arguments with respect to claims 1, 20 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura A. Bouchelle whose telephone number is 571-272-2125. The examiner can normally be reached on Monday-Friday 8-4.

Art Unit: 3763

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 517-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Laura A Bouchelle  
Examiner  
Art Unit 3763



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